

Issue: Income Earned in Illinois/Individual Residency

DEPARTMENT OF REVENUE)
STATE OF ILLINOIS)
) Docket:
 v.)
)
XXXXXX)
) Wendy S. Paul
) Admin. Law Judge
 Taxpayer(s))

4. According to the Department's Notice, taxpayers original returns

for the tax years at issue were not filed within the statutory time period provided by Section 911 of the Illinois Income Tax Act so that refunds issued by the Department to the taxpayers were erroneously issued. (Dept. Group exh. No. 2)

5. On April 12, 1995, taxpayers filed a timely protest. (Dept. Ex. No. 2)

6. For the years at issue, taxpayers were residents of Indiana and filed income tax returns and paid income tax in the state of Indiana. (Taxpayer Ex. No. 2 through 5)

7. During the years at issue, XXXXX was employed by XXXXX as a computer repair person. His territory included both Illinois and Indiana, and taxes were withheld from his wages and paid to the state of Illinois instead of to the state of Indiana. (Testimony of XXXXX; Taxpayer Ex. No. 2, 3, & 4)

8. Other than XXXXX's compensation from XXXXX, taxpayers received no other income in Illinois. (Testimony of XXXXX; Taxpayer Ex. No. 2, 3, & 4)

9. In 1993, taxpayers filed Illinois income tax returns as non-residents, which returns reflected overpayments in the amounts that were withheld from the wages of XXXXX for the subject tax years. (Dept. Ex. No. 2; Taxpayer Ex. No. 2, 3, & 4)

10. Based upon the returns filed by taxpayers in 1993, the Department issued refunds to taxpayers. (Dept. Ex. No. 2)

CONCLUSIONS OF LAW: The Department's position, as reflected in the Notices of Deficiency, is that refunds issued to taxpayers were erroneously issued. The Department's position is solely based upon the statute of limitations for filing claims for refunds. The statute (35 ILCS 5/911(f)) provides, in pertinent part, as follows:

No claim for refund . . . for any amount of credit for tax withheld pursuant to Section 701 may be filed more than 3 years after the due date, as provided by Section 505, of the return which was required to be filed

relative to the taxable year for which the payments were made or for which the tax was withheld. [emphasis added]

I find that the above statute does not operate as a bar to the original returns which encompassed the claims for refund filed by taxpayers. During the subject tax years, taxpayers, as residents of Indiana, were never required to file a return in Illinois. 35 ILCS 5/201; 5/502; 5/701(d). A reciprocal withholding agreement existed between the states of Illinois and Indiana which provided, inter alia that no Indiana resident shall be required to pay Illinois income tax or to file an Illinois income tax return on compensation paid in Illinois. CCH, Illinois Tax Reports, 17-354.

The statutory 3 year limitations period of the statute (35 ILCS 5/911(f)) begins to run on the due date of a return required to be filed. Where, as here, there was never any filing requirement, the statute has no application to the returns filed by taxpayers, and cannot operate as a bar to taxpayers' otherwise valid claims for refund against the Department.

Accordingly, it is my recommendation that the Notices of Deficiency issued to taxpayers should be withdrawn in their entirety.

Administrative Law Judge